Filed 10/7/10 P.B. v. Super. Ct. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

P.B., Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Real Party in Interest.	E051409 (Super.Ct.No. SWJ009614) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Michael J. Rushton, Judge. Petition denied.

Daniel L. Vinson for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, and Carole A. Nunes Fong, Deputy County Counsel, for Real Party in Interest.

Petitioner P.B. (father) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services as to his two children (the children) and setting a Welfare and Institutions Code[1] section 366.26 hearing at the six-month review hearing. Father argues that: 1) the juvenile court erroneously applied the 12-month review test at the six-month hearing; 2) he was not provided with reasonable reunification services; and 3) he participated regularly and made substantive progress in his case plan. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On October 28, 2009, the Riverside County Department of Public Social Services (the department) filed a section 300 petition on behalf of the children. One child was one year old and the other was three months old. The petition alleged that the children came within section 300, subdivision (b) (failure to protect). The petition included the allegations that father neglected the health, safety, and well-being of the children by failing to protect them from their mother (mother),[2] who had a substance abuse problem and mental health issues. Father and mother also engaged in domestic violence. In addition, the petition alleged that father had anger management and substance abuse issues. The detention hearing was held on October 29, 2009. At that time, father was no longer living with mother and the children, since he and mother had a strained

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Mother is not a party to this petition.

relationship. He was living in Alabama but had plans to return to California. The court detained the children in foster care.

Jurisdiction/disposition

In the jurisdiction/disposition report, the social worker recommended that father be provided with reunification services. At the jurisdiction/disposition hearing on December 17, 2009, father was not present, but was represented by counsel. The court found that the children came within section 300, subdivision (b), and ordered father to participate in reunification services. Father's case plan required him to participate in general counseling, complete a domestic violence program, submit to a psychological/ psychiatric evaluation, participate in a psychotropic medication evaluation, and complete a parenting education program.

Six-month Status Review Report and Hearing

The social worker filed a six-month review report on May 28, 2010, recommending that the court terminate services. Father moved back to California at the end of December 2009. He resided in Los Angeles, where he was renting a room. His parents were supporting him. On January 11 and March 9, 2010, the social worker referred him to a therapist. He attended one session on March 23, 2010, and failed to show up for the following appointment. On May 19, 2010, he was discharged for "lack of follow-through." Father had relocated to Glendale, and the department was in the process of getting him a referral for counseling services in that area.

On January 11 and March 9, 2010, father also was referred to Catholic Charities for a parenting education program and a domestic violence/anger management program.

He never followed through with either referral. The social worker noted that there still appeared to be domestic violence issues between father and mother, as of the writing of the report, as father had recently filed a restraining order against mother on April 28, 2010.

On January 11 and March 9, 2010, the social worker also gave father referrals for a psychological evaluation with Edward J. Ryan, Ph.d. Father completed the evaluation on May 25, 2010. Dr. Ryan noted that father was not "motivated to make change[s] in his life, but rather his focus [was] on being compliant and going through the motions." Dr. Ryan was further concerned that father showed indications of being highly egocentric, as he put his own needs ahead of his children. Father moved to Alabama and left his children with mother, knowing that she had a substance abuse problem. He returned to California only when things did not work out for him in Alabama, not out of concern for his children.

In addition, on January 11 and March 9, 2010, father was given referrals for a medication evaluation. He completed that evaluation on May 22, 2010.

On May 6, 2010, the social worker referred father to an anger management program through the Los Angeles County Child Protective Services. Father informed the social worker that payment for the program was required in advance, so the department was exploring the program and funding.

The social worker subsequently referred father to the Glendale Counseling Center for parenting classes. However, the department was still in the process of establishing this out-of-county program as a contracted vendor. The social worker discussed all out-

of-county referrals with father in detail on May 6, 26, June 15, 16, 29, July 6 and 8, 2010. She explained that, pending a program's establishment as a contracted vendor, he could pay for the services himself and get reimbursed by the department.

The social worker noted that father had a history of being a transient. He had relocated numerous times throughout the dependency case, as he resided in Alabama, Hemet, and two different locations in Los Angeles. Father seldom visited the children, even though the maternal aunt, with whom the children lived, would allow him to visit at her home. When told to work with the department in scheduling supervised visits, father said that, due to the unpredictable nature of his work, he could not commit to visitation. On April 8, 2010, a department staff member called father to schedule visitation and offered to arrange the visit closer to his location. The social worker reported that father refused the department's offer to transport the children and meet him in between Hemet and Los Angeles. Father said he would instead go out to visit the children when he got some money together. The social worker later reported that father elected not to visit the children, and that he had cancelled a visit scheduled for May 24, 2010.

A six-month review hearing was held on July 27, 2010. Father's counsel provided stipulated testimony on father's behalf, stating that father was living in Alabama at the time of the jurisdiction hearing, and that he wished he had stayed in California to "get started on his case plan faster." Father said he returned from Alabama in December 2009 and was given referrals in January and March 2010, but he simply "wasn't able to participate in family reunification services" at that time. However, father moved to Glendale at the end of March 2010 and, at that time, began contacting the department for

referrals. He received referrals for psychological and medical evaluations, and had completed both in May 2010. Counsel stated that father would testify that, as of the writing of the last report, he had not received any referrals for anger management or parenting classes in the Los Angeles or Glendale area. Father's counsel said father would also testify that he just started working as an "extra" in Los Angeles on movie sets, earning approximately $100 a day. Counsel for the department rebutted father's testimony with the social worker's report dated July 15, 2010, which documented the department's numerous attempts to provide father with services. Counsel for the department also asserted that father had had no visitation since March 2010.

After considering all the evidence, the court observed that father's inability to maintain a fixed residence had interfered with his ability to participate in services and visit the children, and noted that father had no explanation for his transience. The court found that the return of the children to father's custody would create a substantial risk of detriment to their safety and well-being. The court further found that reasonable services had been provided, and that father had failed to participate regularly and make substantive progress in his case plan. The court stated there was no substantial probability of return if given another six months of services, noting that there was no evidence that father was now in a more stable residence, and there was no proof regarding his employment. The court terminated services and set a section 366.26 hearing.

ANALYSIS

I. The Juvenile Court Properly Terminated Reunification Services At the Six-month Hearing

Father argues that the court erred in not granting him an additional six months of services. He specifically claims that the court failed to apply the correct legal test at the six-month review hearing in determining the substantial probability of the children being returned to him. We conclude that the court properly terminated services.

The Court Properly Terminated Reunification Services

Section 366.21, subdivision (e), provides: "At the review hearing held six months after the initial dispositional hearing, . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. [¶] . . . [¶] If the child was under three years of age on the date of the initial removal, . . . and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under three years of age on the date of initial removal, . . . may be returned to his or her parent or legal guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing."

Father points out that the court found, by clear and convincing evidence, he failed to participate regularly and make substantive progress in his court-ordered case plan. However, he argues that the court improperly applied the test for a 12-month review hearing, as opposed to the test for a six-month review hearing, in making its finding that there was no substantial probability of return within six months. He explains that section 366.21, subdivision (e) (the six-month review), "asks whether there is a substantial probability the child *may* be reunited with the parent by the 12-month review." (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 180 (*M.V.*).) However, section 366.21, subdivision (g)(1) (the 12-month review), "asks whether there is a substantial probability the child *will* be reunited with the parent by the 18-month review." (*M.V.*, at p. 180.) In other words, "the statute commands the court to determine whether there is a strong likelihood of a *possibility* of return (not simply a strong likelihood the return will in fact occur) [at the six-month hearing]." (*Id*. at p. 181.)

Here, the court terminated services after finding, by clear and convincing evidence that "there [was] no substantial probability of return if given another six months of services." Any error in the court applying the 12-month review test at the six-month hearing was harmless, since a finding that there was *no* substantial probability of return would naturally encompass a finding that there was no "strong likelihood of a *possibility* of return." (*M.V.*, *supra*, 167 Cal.App.4th at p. 181.) The evidence was clear. In the prior seven months, father had been unable to maintain a stable residence, obtain or maintain a steady, full-time job, participate in and complete the reunification services that were provided to him, or consistently visit with his children in order to establish a

relationship with them. At the six-month review hearing, he admitted he was given referrals in January and March 2010, but simply said he "wasn't able to participate in family reunification services" at that time. He provided no further explanation for his lack of participation. Moreover, Dr. Ryan, who performed father's psychological evaluation, was concerned that father was "highly egocentric and put his own needs ahead of his children." Dr. Ryan noted that father moved to Alabama and left his children with mother, who had a known substance abuse problem. Father did not consider the welfare of his children with that decision. Dr. Ryan further opined that father would need to actively work on making substantive changes in his parenting style, anger management, establishing and maintaining strong, positive relationships, and taking responsibility for his actions. The problem was that father did not appear motivated to make those substantive changes, in Dr. Ryan's opinion.

In sum, even if the court had applied the test that required a showing of substantial probability that the children *may* be returned to father, it is not reasonably probable that a result more favorable to father would have been reached. In view of all the evidence, the court properly terminated father's reunification services at the six-month review hearing.

II. There Was Substantial Evidence to Support the Court's Finding That Father Was Provided with Reasonable Services and That He Failed to Participate Regularly and Make Substantive Progress in His Case Plan

Father claims that the court erred in finding that the department provided him with reasonable services, and that he failed to participate regularly and make substantive progress in his case plan. We find no error.

A. *Standard of Review*

"[W]ith regard to the sufficiency of reunification services, our sole task on review is to determine whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered. [Citations.]" (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) "We must view the evidence in the light most favorable to the department and indulge all legitimate and reasonable inferences to uphold the order. [Citation.]" (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) "The adequacy of the reunification plan and of the department's efforts to provide suitable services is judged according to the circumstances of the particular case. [Citations.]" (*Id*. at p. 1011.) We review the court's finding of a failure to participate regularly and make substantive progress in a court-ordered case plan under the same substantial evidence test. (See *In re Heather B.* (1992) 9 Cal.App.4th 535, 563-564.)

B. *There Was Substantial Evidence to Support the Court's Findings*

We have reviewed the record and find father's argument unavailing. The record reveals that appropriate services were provided to him, but that he did not fully

participate in them. His case plan required him to participate in general counseling, complete a domestic violence program, submit to a psychological/psychiatric evaluation, participate in a psychotropic medication evaluation, and complete a parenting education program. The record shows that father did not move back to California until December 2009. He essentially admitted that he should have stayed in California to start on his case plan sooner. On January 11, 2010, the social worker provided him with referrals for all the services required in his case plan, including referrals to Catholic Charities for parenting education and domestic violence programs. He did not pursue those referrals. Consequently, the social worker provided the referrals again on March 9, 2010. Father attended one counseling session with a therapist on March 23, 2010, but failed to attend any other appointments. Thus, the therapist discharged him from his counseling services for "lack of follow-through." Father had moved to Glendale in late March 2010. As of the report dated July 15, 2010, the department was in the process of getting father a referral for counseling services closer to Glendale.

Father did participate in a psychological evaluation with Dr. Ryan on May 25, 2010, and a psychotropic medication evaluation on May 22, 2010. However, he failed to follow up on his referrals to Catholic Charities for either parenting education or domestic violence. After he moved to Glendale, he was referred to Glendale Counseling Center for parenting classes, but the department was still in the process of establishing this out-of-county program as a contracted vendor. The social worker explained to father several times that, pending the program's establishment as a contracted vendor, he could pay for the services and then be reimbursed by the department. On May 6, 2010, the social

worker referred father to an anger management program through the Los Angeles County Child Protective Services. The social worker discussed all out-of-county referrals with father on May 6, 26, June 15, 16, 29, July 6 and 8, 2010.

Despite having seven months to participate in services, the only case plan requirements he met were the psychological and medication evaluations. He failed to participate in a domestic violence program or a parenting program, and he attended only one session of counseling. His history of being a transient effected his participation in services. However, he provided no clear explanation as to why he chose to move so many times.

Viewing the evidence in the light most favorable to the department, as we must, we conclude that the department provided father with reasonable services and that he failed to regularly participate and make substantive progress in his case plan.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

MILLER
J.